

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40610
Docket No. SG-40870
10-3-NRAB-00003-090118**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of G.A. Thomas, for 60 hours at his overtime rate of pay in addition to any other compensation, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1 and 16, when on September 24, 25, 26, 27 and 28, 2007, it assigned a junior employee to perform overtime work causing the Claimant lost work opportunities. Carrier compounded this violation by failing to respond to the Organization’s appeal within the time limit provisions of Rule 69. Carrier’s File No. 1486528. General Chairman’s File No. S-1, 16-893. BRS File Case No. 14139-UP.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant is a Signal Maintenance Foreman assigned to work the first shift supervising signal employees working under his jurisdiction in the Houston terminal. This claim protests the failure of the Carrier to assign the Claimant to overtime work scheduled during the week of September 24 - 28, 2007 at the Houston terminal, and the selection of junior Signal Maintenance Foreman Bennett, from a different territory, to perform the overtime involved. It relies upon the following Agreement language of Rule 1 (Seniority Class One) as well as Rule 16 A (Subject to Call) to support the Claimant's entitlement to the work assignment and compensation for the missed overtime opportunity:

"RULE 1 - SENIORITY CLASS ONE

C. Signal Maintenance Foreman: An employee who is assigned to and whose principal duties are to supervise and direct employees assigned to maintenance territories or work under his jurisdiction."

Initially the Organization asserts that the Carrier failed to timely respond to its December 13, 2007 appeal, thereby requiring that the claim be paid as presented under Rule 69. The Organization argues that seniority governs in determining preference to overtime work, citing Third Division Awards 5346, 30833 and 31177. It contends that (1) the Claimant was the senior Signal Maintenance Foreman on the territory where the work was performed (2) it was a continuation of the project he had been working on during his regular assignment (3) he was available for the overtime because he could have had his normal work hours suspended to allow him to work this overtime as the Carrier did with Bennett and (4) he had a preference to the work as the regular assignee to the position under Rule 16, he was entitled to this overtime assignment, and suffered a lost work opportunity, relying on Third Division Awards 32414 and 32431. The Organization denies the Carrier's assertion that the Claimant was offered this assignment, pointing out that such was merely a hearsay contention and nothing more.

The Carrier contends that it timely responded to the Organization's December 13 appeal, which it received on December 20, 2007, by its February 13, 2008 denial, which it sent to the Organization again after receiving the March 20, 2008 letter making this argument. With respect to the merits, the Carrier asserts that Rule 16 has no application because this was planned overtime, not a trouble call, citing Third Division Award 37907. It insists that there is nothing in the Agreement restricting it from using a Foreman to supervise employees working under his jurisdiction, regardless of whether they are on his maintenance territory. Finally, the Carrier states that Manager LeBlanc discussed this work with the Claimant, who expressed his

willingness to remain on his regularly scheduled assignment, and thus, he could not have performed his daily duties for his gang and the overtime work involved.

Initially we find no merit to the Organization's Rule 69 argument. The February 13, 2008 denial timely responded to the December 13, 2007 appeal. A careful review of the record convinces the Board that the provisions of Rule 16 have no application to this case, because this is a situation involving planned overtime, and not a trouble call. See Third Division Award 37907. However, the thrust of the Carrier's argument is that the Claimant - who was clearly the Foreman who had been working on the project in issue on his territory during his normal schedule - made himself unavailable when he told his Manager that he wanted to remain on his regularly scheduled shift. In other words, the Carrier raised an affirmative defense that the Claimant was, in fact, offered the overtime, and he rejected it. As noted by the Organization, no evidence was proffered to support this assertion, which it denied, and it stands in the record as pure hearsay. Under such circumstances, we believe that the Carrier failed to prove its affirmative defense. The Claimant was entitled to the planned overtime in dispute and suffered a lost work opportunity when the Carrier assigned it to a junior Foreman from a different territory. Thus, the Claimant is entitled to be compensated for the additional hours he would have worked on the claim dates at his overtime rate.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of August 2010.